



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

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DA 04-431

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NUCENTRIX SPECTRUM RESOURCES, INC. (DEBTOR-IN-POSSESSION) SEEKS FCC CONSENT TO THE ASSIGNMENT OF LICENSES TO NEXTEL SPECTRUM ACQUISITION CORP.

WT Docket No. 04-40

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: March 22, 2004
Oppositions Due: April 1, 2004
Replies Due: April 8, 2004

Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession) ("Nucentrix DIP"), a wholly-owned subsidiary of Nucentrix Broadband Networks, Inc. (Debtor-in-Possession), and Nextel Spectrum Acquisition Corp. ("Nextel" and together with Nucentrix DIP, "Applicants"), a wholly-owned subsidiary of Nextel Communications, Inc., have filed a series of applications ("Applications") pursuant to Section 310(d) of the Communications Act of 1934, as amended.¹ In these applications, the parties seek Commission consent to assign Multipoint Distribution Service and Multichannel Multipoint Distributions Service (collectively, "MDS"), Wireless Communications Service ("WCS"), Microwave Industrial/Business Pool ("Microwave"), and Cable Television Relay Service ("CARS") licenses from Nucentrix DIP to Nextel.

I. THE TRANSACTION

On September 5, 2003, Nucentrix filed a voluntary petition for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the Northern District of Texas, Dallas Division ("Bankruptcy Court").² As a result of this bankruptcy filing, Nucentrix filed the requisite applications for the involuntary assignment of all of its licenses to Nucentrix DIP.³ These applications were consented to on December 19, 2003, January 6, 2004, and January 14, 2004.⁴

¹ 47 U.S.C. § 310(d).

² *In re Nucentrix Broadband Networks, Inc., et al.*, Debtors, Case No. 03-39123-HDH-11 (Bankr. N.D. Tex., Dallas Div. 2003).

³ See FCC File Nos. 0001470030, 0001454859, 20030917AAA, 20040108AA-08, 20040108AB-08, 20040108AC-08, 20040108AD-08, 20040108AE-08, 20040108AF-08, 20040108AG-08.

⁴ See Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Rpt. No. 1701 (rel. Dec. 24, 2003) (consenting to File Nos. 0001470030 and 20030917AAA).

The subject Applications seek Commission approval of two separate assignments of Nucentrix DIP and Nextel.⁵ Pursuant to Bankruptcy Court approval, Nucentrix DIP held an auction, on November 5 and 6, 2003, to sell certain assets, including the Nucentrix DIP's licenses, to the party submitting the highest and best offer.⁶ As a result of this auction, Nextel, the party submitting the highest and best offer, entered into an Asset Purchase Agreement, dated November 10, 2003, for the sale of the rights in and to Nucentrix DIP's spectrum and tower leases and other related assets, to Nextel for \$51 million, plus certain adjustments.⁷ Additionally, Nextel agreed to provide financing to fund Nucentrix DIP's reorganization under the Bankruptcy Code through the closing of this transaction. The Bankruptcy Court approved this Asset Purchase Agreement on November 12, 2003.⁸ Additionally, Nucentrix DIP and Nextel entered into an Agreement to Assign Certain Assets, dated October 17, 2003, involving ten BTA licenses and four partial BTA licenses. The Bankruptcy Court approved this limited Asset Purchase Agreement on October 28, 2003.⁹

The Applicants assert that grant of the instant Applications would be in the public interest by allowing Nextel to increase its spectrum capacity and offer new digital services to its customers, including those customers in rural areas.¹² According to the Applicants, Nextel is developing and providing innovative wireless services in previously underutilized spectrum. By granting the instant Applications, the Commission would be furthering its goals of promoting the rapid and efficient development of quality spectrum. The Applicants add that approval of these applications would permit Nextel to utilize its extensive experience it has gained in band clearing – transitioning incumbent licenses to clear frequency bands for new commercial mobile radio services (“CMRS”) – to facilitate the proposed realignment of the MDS and ITFS bands.¹⁴

Moreover, the Applicants state that this transaction will enhance the public interest by providing alternatives by helping Nextel to provide the full menu of wireless services to its customers in the marketplace.¹⁵ The Applicants further allege that the proposed assignment would have no adverse effect on competition because Nucentrix DIP and Nextel compete in different markets.¹⁶ Finally,

on December 19, 2004); Wireless Telecommunications Bureau Assignment of Frequencies Applications Action, *Public Notice*, Rpt. No. 1713 (rel. Jan. 7, 2004) (consenting to File Nos. 20040108AA-08, 20040108AB-08, 20040108AC-08, 20040108AD-08, 20040108AE-08, 20040108AF-08, 20040108AG-08 on January 14, 2004).
⁵ See Applications, Public Interest Statement, at 5-6.
⁶ *Id.* at 5.
⁷ *Id.*
⁸ *Id.* at 6.
⁹ *Id.*
¹⁰ *Id.* The four partial BTA licenses are within BTAs that Nextel is acquiring pursuant to its spectrum auction. Thus, these BTAs will be assigned to Nextel in their entirety. *Id.* at 6 n.13.
¹¹ *Id.* at 6.
¹² See *id.* at 6-9.
¹³ See *id.* at 7-8.
¹⁴ See *id.* at 8-9 (citing Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Notice of Proposed Rule Making*, 18 FCC Rcd. 6722 (2003)).
¹⁵ *Id.* at 7.
¹⁶ *Id.* at 9. The Applicants state that Nucentrix DIP offers fixed wireless broadband services to residential and

the Applicants state that Nextel is legally, financially, technically and otherwise qualified to hold the subject licenses, and that the proposed assignment would not implicate either the cable-MDS cross-ownership provisions¹⁷ or foreign ownership restrictions.¹⁸

Nucentrix DIP states that it plans to terminate its broadband data service to its customers in the second quarter of 2004.¹⁹ Nucentrix claims that it will provide its customers with a minimum of ninety days notice of this planned termination of service.²⁰ Nucentrix states that its customers may terminate service at any time without incurring penalties, and it will work to provide customers with alternative means of obtaining broadband access.²¹ Nextel states, however, that, pending the resolution of the Commission's MDS and ITFS rulemaking proceeding, it will continue to provide the video programming services currently provided by Nucentrix DIP (and by those ITFS licensees that rely on common links).²²

II. SECTION 310(d) APPLICATIONS

The following applications seek consent for the assignment of MDS, WCS, CARS, and Microwave licenses that were granted pursuant to Parts 21, 27, 78, and 101 of the Commission's rules, respectively. The applications have been assigned the file numbers indicated below:

A. Part 21 – MDS²³

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
20040116AAA	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	KNSC379

B. Parts 27 and 101 – WCS and Microwave

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001582029 ²⁴	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WPNH216

business subscribers on a non-common carrier basis, while Nextel offers CMRS. *Id.* at 9. The Applicants add that, in any event, the Commission has previously determined that there is effective competition in the CMRS marketplace. *Id.* at 10.

¹⁷ See *id.* at 11; see also 47 U.S.C. § 553(a); 47 C.F.R. § 21.912.

¹⁸ See Applications, Public Interest Statement, at 11; see also 47 U.S.C. § 310(a), (b); 47 C.F.R. § 21.4.

¹⁹ *Id.* at 2 n.5. The Applicants further state that Nucentrix historically used its spectrum to provide “wireless cable” services. However, as part of its transition from wireless cable to broadband data services and other advanced wireless services, Nucentrix transitioned its customers to other providers and discontinued its wireless cable business. See *id.* at 2 n.3; see also 47 C.F.R. § 78.11(b).

²⁰ *Id.*

²¹ *Id.*

²² See CARS Application, File nos. 20040210AC-08, *et al.*, at A-5.

²³ This Application appeared on a separate public notice, dated January 28, 2004. See Wireless Telecommunications Bureau Site-by-Site Accepted for Filing, *Public Notice*, Rpt. No. 1727 (WTB rel. Jan. 28, 2004) (“January 28, 2004 Public Notice”). This Public Notice supersedes the January 28, 2004 Public Notice and will be used to determine the timeliness of any pleadings filed regarding this transaction.

²⁴ ULS File No. 0001582029 has been designated as the lead application, and all pleadings and other submissions filed in this matter that pertain generally to the transaction and not to a particular application will be available through this file number.

C. Part 78 – CARS²⁵

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
20040210AC-08	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WLY516
20040210AD-08	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WLY539
20040210AE-08	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WLY552
20040210AF-08	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WLY638
20040210AG-08	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WLY650
20040210AH-08	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WLY651
20040210AI-08	Nucentrix Spectrum Resources, Inc. (Debtor-in-Possession)	WLY716

III. DESIGNATED ENTITY ISSUES

This transaction will include the assignment of MDS licenses subject to the Commission's installment payment program to Nextel. As Nextel is not eligible to assume Nucentrix DIP's installment payment plans, the Parties acknowledge that full payment of the remaining unpaid principal and any unpaid interest accrued through the date of consummation and any other payments otherwise required by Section 1.2111 of the Commission's rules will be required to be paid immediately prior to closing.²⁶

IV. GENERAL INFORMATION

The assignment applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.²⁷

Interested parties must file petitions to deny no later than **March 22, 2004**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **April 1, 2004**. Replies to such pleadings must be filed no later than **April 8, 2004**. All filings concerning matters referenced in this Public Notice should refer to **DA 04-431** and **WT Docket No. 04-40**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,²⁸ submissions in this matter may be filed electronically (*i.e.*, by the Commission's Electronic Comment Filing System ("ECFS")) or by hand delivery to the Commission's Massachusetts Avenue location.

²⁵ These Applications appeared on a separate public notice, dated February 11, 2004. See Cable Television Relay Service (CARS) Applications Re: Applications Accepted for Filing, *Public Notice*, Rpt. No. 1649 (MB rel. Feb. 11, 2004) ("February 11, 2004 Public Notice"). This Public Notice supersedes the February 11, 2004 Public Notice and will be used to determine the timeliness of any pleadings filed regarding this transaction.

²⁶ See 47 C.F.R. § 1.2111.

²⁷ See 47 U.S.C. § 309(b).

²⁸ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, FCC-01-345 (rel. Nov. 29, 2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number

- **If filed by ECFS,**²⁹ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (2) 863-2898 (facsimile); (2) Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at erin.mcgrath@fcc.gov, or (202) 418-7447 (facsimile); (3) Kathy Harris, Mobility Division, at kathy.harris@fcc.gov, or (202) 418-7447 (facsimile); (4) Linda C. Ray, Broadband Division, Wireless Telecommunications Bureau, at linda.ray@fcc.gov, or (202) 418-7447 (facsimile); (5) Wayne McKee, Engineering Division, Media Bureau, at wayne.mckee@fcc.gov, or (202) 418-1189 (facsimile); (6) Rita Cookmeyer, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at rita.cookmeyer@fcc.gov, or (202) 418-0890 (facsimile); and (7) Neil A. Dellar, Transaction Team, Office of General Counsel, at neil.dellar@fcc.gov, or (202) 418-2822 (facsimile).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's Electronic Comment Filing System (ECFS), which may be accessed on the Commission's Internet website at <http://www.fcc.gov/cgb/ecfs>.

for General Correspondence, *Public Notice*, DA 01-2919 (rel. Dec. 14, 2001); Reminder Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, DA 03-2730 (rel. Aug. 22, 2003).

²⁹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

For further information, contact Linda Ray, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-0257 (Part 21 and 101 licenses); Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-7240 (Part 27 licenses); or Wayne McKee, Engineering Division, Media Bureau, at (202) 418-2355 (Part 78 licenses).

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